

DEPARTMENT OF STATE REVENUE

04-20191302.LOF

Letter of Findings Number: 04-20191302
Sales/Use Tax
For The Tax Years 2014 through 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Out-of-State Business was not liable for the sales/use tax on vehicle repairs for which, pursuant to their agreement, a vendor of Business paid the tax at the time of the vehicle repairs or vehicle maintenance. Nonetheless, Business remained responsible for tax on the remainder of transactions assessed.

ISSUE

I. Sales and Use Tax - Imposition - Burden of Proof.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of sales/use tax on a vendor's invoices concerning vehicle repairs.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana. Taxpayer leases a fleet of vehicles - used by its employees in its day-to-day operation - to serve its customers. In addition, Taxpayer contracts with an unrelated company ("Vendor E"), which provides vehicle fleet management services. Pursuant to a mutual agreement, Vendor E periodically invoices Taxpayer for services performed and requests reimbursements of expenses incurred, including vehicle maintenance, fuel, and costs of vehicle registration.

The Indiana Department of Revenue ("Department") audited Taxpayer's business records and tax returns for the tax years 2014, 2015, and 2016. Taxpayer and the Department both agreed to utilize two separate statistical sampling methods to project the audit results for Indiana sales and use tax purposes.

Pursuant to the audit, the Department determined that Taxpayer had an overpayment for 2016. However, the Department also found that Taxpayer was responsible for additional sales/use tax for 2014 and 2015 because certain retail transactions were not exempt from Indiana sales and use tax. Pursuant to the audit, the Department assessed Taxpayer additional sales tax, use tax, and interest accordingly. Nonetheless, the Department abated the ten percent negligence penalty.

Taxpayer contends only one issue, arguing that it was not responsible for the additional sales and use tax on transactions for which Vendor E paid the tax in Taxpayer's behalf. An administrative hearing was held. Subsequently, Taxpayer requested, and the Department granted, additional time to provide documentation to support its protest. This Letter of Findings results. Further facts will be provided as necessary.

I. Sales and Use Tax - Imposition - Burden of Proof.

DISCUSSION

The Department determined that Taxpayer did not pay sales tax or remit use tax on certain transactions and proceeded to assess additional tax on these transactions. In particular, the transactions at issue involved various Vendor E's invoices which contain itemized charges, including "accident services," "fuel" and "repair." The audit

report listed the transactions as "Vehicle Other" or "Vehicle Repairs." Taxpayer disagreed, claiming that it was not responsible for the additional sales and use tax on the transactions to which Vendor E paid the tax at the time of the transactions.

The issue thus is whether Taxpayer demonstrates that it was not responsible for paying the sales or remitting use tax on these transactions because its Vendor E paid in Taxpayer's behalf.

Indiana mandates that every person who is subject to a listed Indiana tax must keep books and records, including all source documents, "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). "If the [D]epartment reasonably believes that a person has not reported the proper amount of tax due, the [D]epartment shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the [D]epartment." IC § 6-8.1-5-1(a). All tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Rev.* 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

The Department's audit noted in relevant part:

All invoices on the pull list were examined. Each invoice was reviewed to ensure that the item on the pull list was properly invoiced sales tax, if taxable, was exempt, or use tax self-assessed and paid, in the case of out of state purchase. Adjustments for errors in which tax was underpaid or overpaid were included in the pull list and used to arrive at the additional taxable purchases

In other words, the Department during the audit process determined that in performing the management services, Vendor E - on behalf of Taxpayer - contracted other businesses to provide vehicle maintenance and repair for Taxpayer's vehicle fleet. Nonetheless, Taxpayer failed to demonstrate that it simply reimbursed Vendor E for the expenses incurred with respect to vehicle maintenance and repair.

Throughout the protest process, Taxpayer offered additional documents to support its assertion that, pursuant to their agreement, Vendor E paid the tax on vehicle repairs. To that end, the Department, upon review and based on the additional supporting documents provided, is prepared to agree that the tax was paid at the time of the vehicle repairs.

In short, the Department agrees that tax was paid on the transactions under Vendor E "Vehicle Repairs" and "Vehicle Other." The Department will remove the transactions under Vendor E "Vehicle Repairs" and "Vehicle Other" from the pull list and recalculate the assessment.

FINDING

Taxpayer's protest is sustained.

February 28, 2020

Posted: 05/27/2020 by Legislative Services Agency
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